

AMENDED IN ASSEMBLY SEPTEMBER 3, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 3

Introduced by Senator Burton
(Principal coauthor: Senator Vasconcellos)
(Coauthors: Senators Perata, Romero, Scott, and Sher)
(Coauthors: Assembly Members Hancock, Leno, Nation, and
Steinberg)

December 2, 2002

An act to add Section 1376 to the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as amended, Burton. Death penalty: mental retardation.

Existing law, added by an initiative statute, provides that the penalty for a defendant who is found guilty of murder in the first degree, where special circumstances exist, is death or imprisonment in the state prison for life. In determining the penalty to be imposed, the trier of fact is required to take into account whether, as a result of mental defect, the defendant had the capability to appreciate the criminality of his or her conduct or to conform that conduct to the requirements of the law, if this is relevant. A recent decision of the United States Supreme Court has held that the imposition of the death penalty on a mentally retarded person is prohibited by the United States Constitution.

This bill would define the term "mentally retarded" and would provide that a defendant in any case in which the prosecution seeks the death penalty may apply for an order directing that a mental retardation

hearing be held. This bill would require a court to order a hearing, ~~without a jury,~~ to determine whether a defendant is mentally retarded upon submission of a declaration by a qualified expert opining that the defendant is mentally retarded. *It would further require the court, at the request of the defendant, to conduct the hearing without a jury prior to the commencement of the trial, or if the defendant does not request a court hearing, to order a jury hearing to take place at the conclusion of the trial.* The bill would specify that the defendant shall present his or her evidence of mental retardation, followed by the prosecution's evidence and any rebuttal evidence, with each party permitted to reopen only as provided. This bill would provide for other specified procedures, and would provide that the defense shall have the burden of proving by a preponderance of the evidence that the defendant is mentally retarded. It would provide that the penalty for a mentally retarded defendant found guilty of murder in the first degree where special circumstances which would otherwise make him or her eligible for imposition of the death penalty have been found, shall be confinement in the state prison for life without possibility of parole. This bill would also provide that if, after a mental retardation hearing, the court *or jury* finds that ~~the death penalty is not precluded~~ *defendant is not mentally retarded,* the criminal trial shall proceed as in any other case in which a sentence of death is sought by the prosecution, and the criminal jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation. Because this bill would place additional duties on prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1376 is added to the Penal Code, to read:
- 2 1376. (a) As used in this section, "mentally retarded" means
- 3 ~~the condition currently defined in subdivision (a) of Section~~

~~1001.20. the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.~~

(b) (1) In any case in which the prosecution seeks the death penalty, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a mental retardation hearing be conducted. Upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to determine whether the defendant is mentally retarded. ~~The~~ At the request of the defendant, the court shall conduct the hearing without a jury prior to the commencement of the trial. The defendant's request for a court hearing prior to trial shall constitute a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is mentally retarded. The jury hearing on mental retardation shall occur at the conclusion of the phase of the trial in which the jury has found the defendant guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true. Except as provided in paragraph (3), the same jury shall make a finding that the defendant is mentally retarded, or that the defendant is not mentally retarded.

~~(2) The court shall~~

(2) For the purposes of the procedures set forth in this section, the court or jury shall decide only the question of the defendant's mental retardation. The defendant shall present evidence in support of the claim that he or she is mentally retarded. The prosecution shall present its case regarding the issue of whether the defendant is mentally retarded. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of retardation. Nothing in this section shall prohibit the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is mentally retarded, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. No statement made by the defendant during an examination ordered by the court shall be admissible in the trial on the defendant's guilt.

1 (3) At the close of evidence, the prosecution shall make its final
2 argument, and the defendant shall conclude with his or her final
3 argument. The burden of proof shall be on the defense to prove by
4 a preponderance of the evidence that the defendant is mentally
5 retarded. *The jury shall return a verdict that either the defendant*
6 *is mentally retarded or the defendant is not mentally retarded. The*
7 *verdict of the jury shall be unanimous. In any case in which the jury*
8 *has been unable to reach a unanimous verdict that the defendant*
9 *is mentally retarded, and does not reach a unanimous verdict that*
10 *the defendant is not mentally retarded, the court shall dismiss the*
11 *jury and order a new jury impaneled to try the issue of mental*
12 *retardation. The issue of guilt shall not be tried by the new jury.*

13 (c) *In the event the hearing is conducted before the court prior*
14 *to the commencement of the trial, the following shall apply:*

15 (1) If the court finds that the defendant is mentally retarded, the
16 court shall preclude the death penalty and the criminal trial
17 thereafter shall proceed as in any other case in which a sentence of
18 death is not sought by the prosecution. If the defendant is found
19 guilty of murder in the first degree, with a finding that one or more
20 of the special circumstances enumerated in Section 190.2 are true,
21 the court shall sentence the defendant to confinement in the state
22 prison for life without the possibility of parole. *The jury shall not*
23 *be informed of the prior proceedings or the findings concerning the*
24 *defendant's claim of mental retardation.*

25 ~~(d)~~—

26 (2) If the court finds that the defendant is not mentally retarded,
27 the trial court shall proceed as in any other case in which a sentence
28 of death is sought by the prosecution. The jury shall not be
29 informed of the prior proceedings or the findings concerning the
30 defendant's claim of mental retardation.

31 (d) *In the event the hearing is conducted before the jury after*
32 *the defendant is found guilty with a finding that one or more of the*
33 *special circumstances enumerated in Section 190.2 are true, the*
34 *following shall apply:*

35 (1) *If the jury finds that the defendant is mentally retarded, the*
36 *court shall preclude the death penalty and shall sentence the*
37 *defendant to confinement in the state prison for life without the*
38 *possibility of parole.*



1 (2) *If the jury finds that the defendant is not mentally retarded,*
2 *the trial shall proceed as in any other case in which a sentence of*
3 *death is sought by the prosecution.*

4 (e) *In any case in which the defendant has not requested a court*
5 *hearing as provided in subdivision (b), and has entered a plea of*
6 *not guilty by reason of insanity under Sections 190.4 and 1026, the*
7 *hearing on mental retardation shall occur at the conclusion of the*
8 *sanity trial if the defendant is found sane.*

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

